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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,857	12/04/2003	Leandro Rizzuto JR.	892.0034USU	8303

7590 05/19/2006

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EXAMINER
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RUNNING, RACHEL A

ART UNIT	PAPER NUMBER
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3732

DATE MAILED: 05/19/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/729,857	Applicant(s) RIZZUTO, LEANDRO	
	Examiner Rachel A. Running	Art Unit 3732	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/18/2004</u> . | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The applicant discloses a ceramic material, however, it is unclear as to what type of ceramic material is used and one skilled in the art would not know what type of ceramic material to use in order to make and/or use the invention, therefore all ceramic material will be treated as being enabled to: emit heat, retain ions, and retain infrared energy.

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-4, 7, 9-17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark (U.S. Patent No. 6,382,216) in view of Lo. (U.S. Patent

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6,186,150). Clark discloses a brush comprising a handle (12) having a proximal end, and a distal end, wherein the distal end has a hollow interior (14) see Figure 1.

Pluralities of bristles (15) are opposite the aperture (14), and a hair pick (13) is disposed in the aperture see Figure 1. The hair pick is a longitudinal member that comprises an elongated shaft portion (23); with a cylindrical portion (20) wherein the diameter of the cylindrical portion is complementary in size to the diameter of the aperture in the handle see Figure 2. Clark does not disclose that one or more portions of the hair pick are made of a ceramic material (claims 1 and 9), the hair pick is formed of a resilient material with a ceramic coating (claims 10-12), and a bulbous member (claims 3 and 19). Lo teaches a hair implement that is coated with a ceramic material in order to use infrared energy to protect the users hair (column 2, lines 20-25). Regarding claims 1 and 9, it would have been obvious to one having ordinary skill in the art at the time the invention was made to have the pick of Clark be made of a ceramic material as taught by Lo in order to use infrared energy and protect the users hair. Regarding claims 10-12, it would have been obvious to one having ordinary skill in at the time the invention was made to have the pick of Clark be made of a resilient material with a ceramic coating as taught by Lo in order to use infrared energy and protect the users hair. Regarding claims 3 and 19, it would have been an obvious matter of design choice to make the extension pin (24) of Clark shaped like a bulb, since applicant has not disclosed that the bulbous member solves any stated problem and it appears that the invention would perform equally well with the pin member.

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3. Claims 5, 6, 8, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Lo as applied to claims 4 and 13 above, and further in view of Gekhter et al. (U.S. Patent No. 5,934,295). The combination of Clark and Lo disclose the claimed invention as described above in the rejection of claims 1-4, 7, and 9-17; however, it does not disclose a sheath surrounding the cylindrical portion that is made of an elastomeric material, with a plurality of grooves, and is selectively engagable with the aperture of the handle. Gekhter et al. teaches a sheath (204) surrounding a cylindrical portion that is made of an elastomeric material with a plurality of grooves (206), and is selectively engagable with the aperture of the handle see Figure 9c (column 5, lines 35-45). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cylindrical portion of the Clark and Lo combination have an elastomeric sheath surrounding it as taught by Gekhter et al. in order to resist an unintended pull-out of the pick member.

4. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Lo in view of Gekhter et al. Clark discloses a hair pick comprising a cylindrical member (20), a staff member (23) being elongated and connected to the cylindrical member see Figure 1. Clark does not disclose a bulbous member, an elastomeric coating disposed on the cylindrical member that has a plurality of grooves, the hair pick being made from a material that retains energy. Gekhter et al. teaches a sheath (204) surrounding a cylindrical portion that is made of an elastomeric material with a plurality of grooves (206), and is selectively engagable with the aperture of the handle see Figure 9c (column 5, lines 35-45). Lo teaches a hair implement that is coated with a

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ceramic material in order to use infrared energy to protect the users hair (column 2, lines 20-25). It would have been an obvious matter of design choice to make the extension pin (24) of Clark shaped like a bulb, since applicant has not disclosed that the bulbous member solves any stated problem and it appears that the invention would perform equally well with the pin member. It further would have been obvious to one having ordinary skill in the art at the time the invention was made to have the cylindrical portion of the Clark have an elastomeric sheath surrounding it as taught by Gekhter et al. in order to resist an unintended pull-out of the pick member. It would have been further obvious to one having ordinary skill in the art at the time the invention was made to have the pick of Clark be made of a ceramic material as taught by Lo in order to use infrared energy and protect the users hair.

### ***Conclusion***

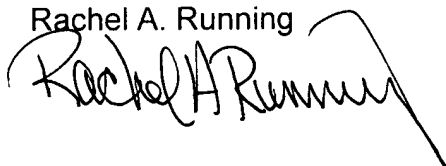
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rachel A. Running whose telephone number is (571) 272-1917. The examiner can normally be reached on Monday-Friday 8:00 am - 4:30 pm.

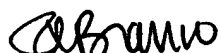
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571) 272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Rachel A. Running



  
PATRICIA BIANCO  
PRIMARY EXAMINER  
5/16/05